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EXAMINER

RUHL, DENNIS WILLIAM

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/001,766	<b>Applicant(s)</b> MANO ET AL.	
	<b>Examiner</b> Dennis Ruhl	<b>Art Unit</b> 3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

Applicant's response of 5/18/09 has been entered. The examiner will address applicant's remarks at the end of this office action.

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-5 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In claim 1, applicant has recited "*wherein the content distribution intermediary system comprises, the content distribution intermediary system receiving the money transfer completion message sent from the escrow agent computer*". Applicant is reciting a method step of actually receiving information sent from the escrow agent computer, which is a mixing of distinct statutory classes of invention that renders the claim non-statutory. Claim 1 is an apparatus type of claim where structure is recited, not positive recitations directed to method steps.

Also with respect to claim 1, applicant has added the term "a physical distribution agent" and it appears that this language includes a person, which is not allowed to be recited in an apparatus type of claim. Applicant has not claimed a physical distribution system or computer, but has recited the agent. That is taken as including a human being, which renders the claim non-statutory for an additional reason.

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3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-5,9, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claim 1, it is not clear as to under what conditions one would be infringing the claim. Is just having the recited structure infringement or would one also have to use the escrow agent computer to actually send a money transfer completion message to the content distribution system? Is the method step required in the scope of the claim or only the recited structure? This is not reasonably clear to one wishing to avoid infringement and renders the claim indefinite. Method steps will not receive weight in apparatus claims. With respect to the part of the claim that recites the escrow management server as being "for generating....", etc., it is not clear in the claim if the management server is even a positively recited element. All that is claimed as far as the management server goes is that the escrow agent computer is *configured to receive* information from an escrow management server, but this is not reciting that the server itself is part of the claimed system. The server is only claimed in relation to how the escrow agent computer has been configured. It is not clear if an escrow management server is positively recited in the claims or if it is only recited with respect to how the escrow agent computer is configured. This renders the claim indefinite.

For claim 9, with respect to the steps of registering by "the computer" and the later recited references to "the computer", which computer does this refer to? The

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preamble recites an “escrow agent computer” and in the first receiving step it is recited that the receiving is “by a computer”. Which computer is being referred to in later portions of the claim? This is not clear.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferstenberg et al. (5873071) in view of Abecassis (5426281).

For claim 1, Ferstenberg discloses a system and method for the sale of commodities. Ferstenberg discloses a “content distribution” intermediary system 40 (that has a server or computer) that allows buyers and sellers of a commodity to interact and negotiate with each other concerning the purchase of the commodity. The

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descriptive language of “content distribution” is noted but is not defining any structure to the intermediary system other than what is positively recited, so this language is nothing more than descriptive in nature. The intermediary system receives information from sellers of commodities and allows buyers to view the information received from the sellers, (e.g. it receives and transmits information). The commodity that is being sold can be anything from stocks and bonds to tangibles such as copper or soy beans, see column 1, lines 14-25. With respect to the limitation that the data to be received is “media content information”, this is directed to non-functional descriptive material that does not define any further structure to the system being claimed. The data that is to be received has nothing to do with the structure of the overall system that actually receives the data. The limitation of “media content information” is directed to the intended use of the system that does not result in a structural difference from that of the prior art.

Ferstenberg discloses that there are *seller computers* and *buyer computers*, which are the client systems disclosed in column 39. Each client system is connected via a *network* to the intermediary system 40. The claimed *input means* is considered to be the hardware and software that the intermediary system would necessarily be required to have so that data can be received from a seller and from a buyer. This can be a modem and the software that allows data to be received. The intermediary system inherently has an input means. It must have an input means so that the system can receive data from the sellers and buyers of various commodities as disclosed by Ferstenberg. The claimed *recording means* is considered to be the database of the intermediary system 40 and the software that controls the saving of received data. This

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is also inherent to the system 40 because the received data is necessarily going to be stored. The claimed *output means* is the hardware and software that allows system 40 to send out communications to the clients (buyers and sellers). For system 40 to be able to send communications to the client systems (buyers and sellers), an output means is necessarily required. The claimed *settlement means* that is for settling a “purchase-and-sale contract” is considered to be the hardware and software that allows the negotiation between the seller and buyer to occur, which results in the a sale occurring. The act of negotiation is done to allow a contract for sale to be arrived at and once that is accomplished, a contract is the result. This satisfies what is claimed as far as a settlement means goes. With respect to the fact that claim 1 is reciting that the information received is concerning “media content information” and that the input means is further operable to receive 2nd information indicating purchase rights, a delivery status, and that the recording means can record a money transfer completion message, this has been considered, but as far as the system goes this defines nothing structurally to the system that is not found in Ferstenberg. This language can also be considered as being directed to the intended use of the system. This is because the commodity that is being sold is not part of the system and claiming a specific commodity or that the data is representative of a particular commodity does not change the overall system as far as structure goes. The system of Ferstenberg and the input means of Ferstenberg are fully capable of receiving the claimed kind of information. The input means is operable to receive any kind of data. The kind of data claimed is directed to non-functional descriptive material. The kind of data that the input means is able to receive does not

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render the input means any different structurally from that of the prior art input means.

Because Ferstenberg can be used with any kind of commodity and because the system is what is being claimed in claim 1 (not the method), Ferstenberg satisfies what is claimed. The recitation that it is "media content information" that is being sold does not result in a structurally different system from that of Ferstenberg. The server is disclosed as receiving information and presenting information to both sellers and buyers. This requires that the server have the ability to generate data and transmit it to another computer. This is the operability that applicant has claimed with the only difference being the intended use that is related to non-functional descriptive material. This is another recitation directed to just the ability of the server to generate data (can simply be retrieving previously stored data) and the ability to transmit certain types of information, something that is found in Ferstenberg. The server 40 is fully capable of generating information and transmitting it, the specific information claimed is non-functional descriptive material. The same rationale is true for the recording means. The recording means can record whatever data one wants it to record. The data intended to be recorded is non-functional descriptive material. These recitations define nothing further to the system that is not found in Ferstenberg and are directed to the intended use of the system as far as what data applicant intends to use the system with or what data applicant intends to receive, record, or transmit. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it



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meets the claim. With respect to the newly added limitation of there being a "physical distribution agent", this is taken as being satisfied by another computer connected to the network in Ferstenberg. This claimed agent is not even related in any way to anything else claimed and appears to be just another computer connected to the network. This interpretation is consistent with applicant's disclosure. The term "physical distribution" adds no structure and/or does not require any specific type of agent. This language is directed to non-functional descriptive material.

Not disclosed is that there is an escrow agent computer that is configured to receive escrow processing information and an escrow management server, for confirming transfer of money from a buyer to an escrow agent, and for generating a money transfer completion message.

Abecassis discloses a computerized system that connects buyer and seller computers 102, 103, to an escrow agent computer system 40. In column 2, lines 17-38 it is disclosed that it is known in the art to use computing devices for purchase transactions where funds are electronically sent to an electronic type of escrow agent. This is background information and teaches that it is known in the art to provide escrow services for electronic transactions. This is what Abecassis is directed to. In column 1, lines 8-14 it is disclosed that the invention is for "computer based transactions". In column 2, lines 51-55 it is disclosed that some escrow procedures lack the degree of *automation* that permits automated disbursement of a deposits based on pre-established conditions. Column 2, lines 58-65 disclose that there is a need for a computer based transaction system where payment relies upon a third party secure

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guaranteed account that would manage the appropriate release of funds". In column 3, lines 3-21, Abecassis describes his invention by referring to it as "an escrow based deposit system". In column 6, lines 17-20, it is disclosed that the deposit center 40, which is equivalent to the claimed "escrow agent computer", can be implemented by one or several computers or other suitable logic devices that are connected to modems to the communications equipment 100 and that includes substantial memory capacity. The use of one or more computers for the escrow agent system satisfies having an escrow agent computer and an escrow management server as a server is the same as a computer. It is disclosed that transaction details are entered into a computing device and the information is sent to the escrow agent 40. That information is considered to satisfy the claimed escrow processing information. The escrow agent 40 handles the receipt of escrow processing information and confirms the transfer of funds from the buyer as claimed. With respect to the language that recites what the escrow management server is "for", this language is reciting the intended use of the server and is not reciting a further structural limitation to what is claimed. The claimed escrow processing information is directed to non-functional descriptive material that does not serve as a limitation. The information itself is entirely dependent on the commodity being sold or transferred, as well as the individual transactions themselves.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a third party escrow agent computer system to Ferstenberg so that escrow services can be obtained by customers. This is taught by Abecassis. Adding escrow agents to the computerized network system of Ferstenberg

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is something that would not involve more than ordinary skill in the art. It involves nothing more than adding an electronic escrow agent computer system to the invention of Ferstenberg to provide the results that one would naturally expect to be obtained, namely the ability to provide escrow services. It is old and well known in the art to provide escrow services via use of computers over a computer network as is evidenced by Abecassis.

Not specifically disclosed in the combination of Ferstenberg and Abecassis is that the escrow agent computer can generate a money transfer completion message to confirm the transfer of funds from the buyer to the escrow agent. While this does not appear to be disclosed by Abecassis, it is considered to be obvious to one of ordinary skill in the art to provide the buyer with a message that confirms their money has been received by the escrow agent. This is naturally something that one of ordinary skill in the art would find obvious for the reason that you would want to inform the buyer when the funds have been transferred so they know that they are now waiting for their product and so they have information as to the status of the money transfer. It is very old and well known in the art to provide messages that confirm the transfer of money between accounts. This is notoriously old and well known in the art and is considered to be well within the knowledge of one of ordinary skill in the art.

For claim 2, the negotiation aspect of Ferstenberg results in the formation of and storage of a document (the transmitted offers and counteroffers) regarding the sale of the commodity. This satisfies what is claimed.

For claim 3, the input means is fully capable of receiving the claimed information as was discussed with respect to claim 1. It is considered inherent to Ferstenberg that there is a "search means" that will search for matching information that matches the information submitted from the buyer. This is necessarily present in Ferstenberg because when a buyer submits an order for a particular commodity, the system 40 must have some way of determining what clients can satisfy the order desired by the buyer. This is how the matching of a selling client to a buying client happens. The outputs means has already been addressed with respect to claim 1. The system 40 cannot assist in the conducting of a transaction if it cannot be determined who has offered a particular commodity for sale that a buyer has expressed an interest in purchasing. As stated previously, the kind of data intended to be received or outputted by various claim elements is directed to the intended use of the system and is considered to be non-functional descriptive material that does not serve as a limitation.

For claim 4, the input means are satisfied by the input means discussed with respect to claim 1. The system 40 stores information concerning the sellers and buyers that interact with system 40, which satisfies what is claimed with respect to the recording means.

For claim 5, this claim is reciting nothing further structurally to the system of claim 1. This is because the "media content rights" are not a structural part of the system. The rights are just what the system is used to sell. Additionally, "rights" are not even a real world tangible thing that can be claimed, so the examiner cannot possibly give

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weight to what is claimed. A “right” is not a real world thing, but is more of an intangible thing. Claim 5 is directed to non-functional descriptive material.

8. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferstenberg et al. (5873071).

For claims 6-8, Ferstenberg discloses a system and method for the sale of various commodities. Ferstenberg discloses an intermediary system 40 (a computerized system; e.g. a server) that allows buyers and seller of a commodity to interact and negotiate with each other concerning the purchase of the commodity. The intermediary system receives information from sellers of commodities and allows buyers to view the information received from sellers. The commodity that is being sold can be anything from stocks and bonds to tangibles such as copper or soy beans, see column 1, lines 14-25. Ferstenberg discloses that there are seller computers and buyer computers, which are the client systems disclosed in column 39. Each client system is connected via a network to intermediary system 40. The claimed *receiving first content* is considered to be satisfied by the fact that data is received from a seller regarding what commodities are for sale (column 17, lines 51-63). This *information is recorded* as claimed. The claimed *outputting step* is the sending of information to the buyer. This would be information regarding what the seller is selling and would be notification to the buyer that a transaction may be able to be made. The *settlement step* is disclosed in step 14 of Ferstenberg. Ferstenberg disclose that negotiation between the seller and buyer occurs by the transmission of offers and counter offers. The act of negotiation is

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done to allow a contract for sale to be arrived at and once that is accomplished, a contract is the result. The act of viewing offers and counter offers satisfies the claimed viewing of web pages as claimed. The offers and counter offers are messages as claimed.

For claims 6,7, with respect to the fact that the claim is reciting that the information received is concerning "media content", this is not disclosed by the prior art. Also not disclosed is that information is received indicating the purchase rights of the media content and that information about the delivery of the media content is recorded. Also not disclosed is that the escrow processing information includes title of media content (item being purchased), buyer and seller names, date and price.

For claim 6, also not disclosed is the receipt of a delivery status message from a physical distribution agent and the recording of information about delivery of the media content.

Also not disclosed for claims 6,7 is the limitation of generating and transmitting information about the purchase and sale contract to an escrow agent and receiving a money transfer completion message from the escrow agent.

With respect to the *media content* limitation and the *purchase rights*, because it is disclosed that the commodities can be stocks and bonds, or real world tangible goods (copper), one of ordinary skill in the art would have recognized that the system of Ferstenberg could be used for the selling and buying of any kind of commodity. Because it is very well known in the art to one of ordinary skill in the art that "program content" (broadcasting rights for some kind of media content) is sold by "content

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producers” and that content is purchased by “broadcasters”, one of ordinary skill in the art at the time the invention was made would have found it obvious to use the system of Ferstenberg for the sale and purchase of television programming rights. This is just using the Ferstenberg for another type of commodity that is widely recognized as already being bought and sold by those involved in television and the media. When one is selling media content, it is considered inherent that there is information indicating what the actual rights are that are being purchased. The rights that are claimed as being received are necessarily involved in the selling of broadcast rights for media content, as is very well known in the art. With respect to the escrow processing information, information such as identification of the item that is being purchased, the names of the buyers and sellers, and the date and price are all types of data that one of ordinary skill in the art would find obvious to use. You have to identify the seller and the buyer. That is needed to know who to take the money from and who to give it to. Identifying the item being purchased is desirable so that it is known what the transaction is for, in a similar manner to that of a receipt for a purchase that identifies the item purchased. Having the date and price is also something that would have been obvious. These are all types of data that one of ordinary skill in the art would find obvious to use and do not involve anything more than ordinary skill in the art.

With respect to the recording of information about the delivery of the media content and receiving a delivery status message (claim 6), the examiner notes that when media content is being sold it must be delivered to the buyer for the transaction to be completed. One of ordinary skill in the art would clearly understand that the seller of

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the media content and all parties involved in the transaction would want to know when the buyer has received the media content. It would have been obvious to one of ordinary skill in the art at the time the invention was made to deliver the media content to the buyer by using a "physical distribution agent" such as UPS™ or the USPS™ or even Federal Express™ (all of which deliver physical goods and act as a delivery agent) and to further receive a status that indicates the media content was delivered. It is well known in the art of mailing items that the sender can request and receive delivery confirmation on sent items. This is nothing new and the examiner takes "official notice" that this service exists in the prior art. People want to know when their sent packages are delivered. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a delivery agent as claimed (such as USPS) and to receive a delivery status message so that it is known when the media content is delivered to the buyer. With respect to recording the delivery information, it follows that it would have been obvious to record the fact that the buyer has actually received the media content (this can be the recording of the fact that the transaction has occurred and has been completed). This would have been obvious.

With respect to the limitation of generating and transmitting "escrow processing information", it is very well known in the art of contracts that escrow accounts are used when sellers are selling various items to a buyer. A third party holds an escrow account and upon the fulfillment of certain conditions will release the content of the account. Escrow accounts and escrow agents are very well known in the art. The examiner continues to take official notice of this fact. One of ordinary skill in the art at the time the



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invention was made would have found it obvious to generate and send the relevant information (escrow processing information) to an escrow agent that deals with an escrow account for the media content transaction, because it is commonplace and well known in the art to use a third party (escrow agent) when dealing with sales of items subject to contractual conditions. Then upon the completion or fulfillment of certain conditions, the account is released. The concept of "escrow", which is well known in the art, leads one to a third party agent and if one were using an escrow agent for the media content transaction, that would involve the generating and sending of information to the escrow agent as is claimed. This is considered to be obvious. With respect to the receipt of a message from the escrow agent (money transfer message), this is directed to the receipt of non-functional descriptive material. The content of the message or what the message says is just descriptive material and is not functional. In this case the mere receipt of anything from an escrow agent satisfies what is claimed because the data claimed as being received is non-functional descriptive material. It would have been obvious to one of ordinary skill in the art to receive some sort of message from the escrow agent, such as when the account is being released. With respect to the escrow processing information, information such as identification of the item that is being purchased, the names of the buyers and sellers, and the date and price are all types of data that one of ordinary skill in the art would find obvious to use. You have to identify the seller and the buyer. That is needed to know who to take the money from and who to give it to. Identifying the item being purchased is desirable so that it is known what the transaction is for, in a similar manner to that of a receipt for a

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purchase that identifies the item purchased. Having the date and price is also something that would have been obvious. These are all types of data that one of ordinary skill in the art would find obvious to use and do not involve anything more than ordinary skill in the art.

For claim 7 in addition to that above, when a program is sold by using the system of Ferstenberg, this is “attaching” the “right” to broadcast the purchased media content to the content itself. When a buyer negotiates the purchase of media content by using the system of Ferstenberg, and a sale is made, this is a granting of the “right” for the buyer to broadcast the purchased media content. This satisfies what is claimed. Also, when purchasing commodities (broadcast rights), a request is received from the buyer as claimed that identifies the media content that they wish to purchase. With respect to the limitation of receiving information about how the buyer wants to use the media content, this is another limitation directed to non-functional descriptive material that does not serve as a limitation. This information is never used at all in the claim and is only claimed as being received, which renders it as non-functional descriptive material.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Conklin et al. (6141653).

For claim 9, Conklin discloses a system and method for processing information relating to the sale and purchase of items (commodities). There are *buyers* and *sellers* (8) that use *information processing apparatus*’ (computers, see figure 1a) to communicate over the Internet (a *network*) with an *information processing system* 2,

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see column 17, lines 13-34. With respect to the recited "escrow agent computer" that is only recited in the preamble, this is noted but not given weight. This computer does not appear on the body of the claim and is not used in any of the recited steps, so due to this element only being recited in the preamble, it does not receive patentable weight.

*Web pages* are used to display information to the buyers and sellers regarding the transactions they are executing (offers, counteroffers, inquiries, etc.). See the summary of invention section of Conklin where the use of the Internet and a website is disclosed. Also see column 19, lines 34-38 where it is disclosed that order activity can be followed by "email or *browser* or similar means.". The step of *receiving first content information from the seller information processing apparatus* is satisfied by a seller in Conklin identifying what it is that they are selling so that buyers can find what they want to buy (via the website and a browser). The *registering* of the received first content is satisfied by storing the information in the database of system 2. The *receipt of 2<sup>nd</sup> content* is satisfied by a buyer indicating that they desire to buy one of the registered content that is registered on the database of system 2 (via the website and browser). Conklin discloses that messages are sent to and from the buyers and sellers and this includes the types of information that is claimed as well as being done by Internet browser and a website. See column 19, lines 28-38 where it is disclosed that a seller can evaluate orders and other inquiries sent to them. Buyers and sellers are disclosed as being alerted that a pending offer or counteroffer has been submitted. This satisfies the claimed receipt of 1st and 2nd content, which can be inquiries and their responses, offers and counteroffers, etc.. With respect to the generating of 1<sup>st</sup> and 2<sup>nd</sup> web pages

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that displays a message, Conklin discloses that a website is used and that a browser can be used to display information relating to the orders. This is disclosed in column 19, lines 28-38 and satisfies the use of 1<sup>st</sup> and 2<sup>nd</sup> web pages to display messages. In Conklin there is necessarily going to be generated new web pages that display the new information for the order. Each counteroffer or message that is sent and then displayed by browser in Conklin satisfies what is claimed as far as 1<sup>st</sup> and 2<sup>nd</sup> web pages go. Also, the content of the message is considered to be non-functional descriptive material because the message itself is not used in any further manner by the claims and is merely descriptive in nature and not functionally related to the overall claim.

Not disclosed is that a site map is maintained that indicates associations between web pages linked to the first web page, where a different web page can be jumped to from the 1<sup>st</sup> page (linking from one page to another). Also not disclosed is that the content is "media content". Also not disclosed is that it is determined whether or not the buyer apparatus has requested a clip of the media content, and generating and sending the clip to the buyer as was added the claim.

A website that has more than one page is well known in the art, where a home page can link a user to other pages in the same website. Each website has recorded in a system server the associations between different web pages. This is represented by the very well known and common features on websites home pages such as links for "About us" or "Privacy Policy" or "FAQ", etc.. To be able to view different pages it must be stored in the system beforehand what the relationship is between different pages so that when a user clicks on a link that says "About us", they are linked to a page that is

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informing them about the website or business and is not the page for their privacy policy. The examiner takes "official notice" that it is old and well known in the art to have links on one page that can link to another page. The examiner considers a site map as claimed to be inherent to any website being created that has more than one page to view. One cannot link from one page to another without having a site map as claimed so that the server knows what page to display in response to certain links being clicked. This is inherent to a website as it is necessarily 100% required for their operation. The language about the site map and the ability to link to one page from the 1<sup>st</sup> web page is just providing that page with a link to another page, such as having the "About us" link appear at the bottom of each web page. Having links from the 1st web page to other pages is something that is obvious to one of ordinary skill in the art for the reasons set forth. With respect to the limitation of controlling the posting of the pages, this is satisfied by the fact that the system 2 of Conklin controls the operation of the method that includes the receipt and sending of messages to buyers and sellers, which when this is done by a browser as is disclosed by Conklin, new pages are having their posting controlled by system 2. The acquiring the messages are present in Conklin when the buyers or sellers evaluate offers and orders or counteroffers, etc.. This satisfies what is claimed.

With respect to the *media content* limitation, Conklin discloses that the system can be used for stock or commodity trading. Also disclosed is the use of the system for a trade show for negotiating and transacting in accommodations, placement, footage, vendors. Conklin also discloses more uses for the system in column 18. One of

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ordinary skill in the art would have recognized that the system of Conklin could be used for the selling and buying of any kind of good or commodity, whether it be stocks or spaces at a trade show. Because it is very well known in the art to one of ordinary skill in the art that "program content" (broadcasting rights for some kind of media content) is sold by "content producers" and that content is purchased by "broadcasters", one of ordinary skill in the art at the time the invention was made would have found it obvious to use the system of Conklin for the sale and purchase of media content as claimed. This is just using Conklin for another type of sold good (media content) that is widely recognized as already being bought and sold by those involved in television and the media. When one is selling media content, it is considered inherent that there is information indicating what the actual rights are that are being purchased. The rights that are claimed as being received are necessarily involved in the selling of broadcast rights for media content, as is very well known in the art.

With respect to the buyer requesting a clip of the media content (determining step) and sending it to the buyer via the web page as has been added to the claim, this is considered to be obvious due to the fact that it is common sense and commonplace in commerce to allow the buyer to see what it is they may want to purchase so they can make an informed decision as to whether or not they will actually go ahead and purchase the item (commodity), in this case the media content. When one of ordinary skill in the art is using the system of Conklin for media content as has already been addressed by the examiner, it just makes sense that the buyer should be able to view a clip of the content that they are interested in buying. With respect to movies and TV

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shows (media content), it is very well known that "clips" are produced so that those possibly interested in seeing the movie or the TV show can get an idea of what the overall content is going to be, and so that they can then make an informed decision.

This is nothing new and reciting that the a "clip" of the media content is requested by the buyer and sent to them for viewing is something that would have been obvious to one of ordinary skill in the art. The alternative is that the seller is going to be expecting the buyer to purchase media content where the buyer has not idea of the quality, or content of the media content itself. It is considered obvious to allow the buyer to view a clip of the media content as claimed.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Borgato (5950178), Olson (20040204994, 20040231018), Hardy et al. (6161121), and Cohen et al. (4750119) disclose the use of escrow agents in electronic networks with interconnected computers.

11. Applicant's arguments filed 5/18/09 have been fully considered but they are not persuasive.

With respect to the argument concerning claims 1-5 and Ferstenberg, the arguments are moot based on the new grounds of rejection that addresses the new claim scope. In general, it is known in the art to use electronic escrow agents for computerized types of transactions. The rejection of record addresses the claimed escrow agent computer limitations and no further comments are deemed necessary.

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With respect to claims 6-8, applicant is arguing that the data makes the claims patentable. Applicant has argued that the escrow processing information is about the sale of the media content and includes the title of the media content, name of buyer, seller name, date, and price. These limitations have been addressed in the current rejection of record. Also, to the extent that applicant is claiming data that would naturally flow from the use of Ferstenberg for whatever commodity one wanted to, if you use the system for "media content", the information that would be involved would include things such as the names of the buyer and seller, price, item identification such as a title of a media title,. This type of information would flow from the use of the system of the prior art with media content, which is obvious to one of ordinary skill in the art. Also, some of the information such as names and date and price are things that are so well known that they would be obvious to somebody with little to no skill in the art. Arguing that the escrow processing information includes the names, price, date, and media title is not the sort of argument that is going to convince the examiner of claim novelty.

With respect to the argument that the prior art does not teach media content, as stated in the rejection of record this is an intended use argument and the use of the prior art system with a specific type of commodity does not render that system novel. This argument is not persuasive.

With respect to claim 9, applicant has argued that the act of requesting to see what it is they are going to purchase does not suggest that one of ordinary skill in the art would request to see a "clip" of a media content, such as a movie, if they were using



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Conklin with media content. Applicant dismisses the examiners reliance upon and reference to what applicant calls a "movie trailer" that shows potential purchasers of media content what it is that they are buying, as somehow not being a "clip" of the media content. A trailer is a clip. There is no difference. The examiner is maintaining the rejection. Allowing a buyer to request a sample of the media content (a clip, trailer, sample, preview, etc.) so they can see an example of what they are buying is considered to be obvious. What business person or individual would purchase media content without ever having had the opportunity to see what it was that they were buying. That would be contrary to common sense. The argument is not persuasive.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later

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than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis Ruhl/  
Primary Examiner, Art Unit 3689